

# MIAMI BEACH

## SOLICITATION TERMS AND CONDITIONS – GOODS

(April 13, 2020)

### **1. GENERAL DISCLAIMERS.**

a. The solicitation referenced herein is being furnished to the recipient by the City of Miami Beach (the "City") for the recipient's convenience. Any action taken by the City in response to Bids made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such Bids, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City. In its sole discretion, the City may withdraw the solicitation either before or after receiving bids, may accept or reject bids, and may accept bids which deviate from the solicitation, as it deems appropriate and in its best interest. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting Bids in response to this solicitation.

b. The information contained herein is provided solely for the convenience of prospective Bidders. It is the responsibility of the recipient to assure itself that information contained herein is accurate and complete. The City does not provide any assurances as to the accuracy of any information in this solicitation. Any reliance on these contents, or on any permitted communications with City officials, shall be at the recipient's own risk. Bidders should rely exclusively on their own investigations, interpretations, and analyses. The solicitation is being provided by the City without any warranty or representation, express or implied, as to its content, its accuracy, or its completeness. No warranty or representation is made by the City or its agents that any Bid conforming to these requirements will be selected for consideration, negotiation, or approval.

c. Bidders are hereby advised that this solicitation is subject to the following ordinances/resolutions (if applicable), which may be found on the City Of Miami Beach website: <https://www.miamibeachfl.gov/city-hall/procurement/procurement-related-ordinance-and-procedures/>

- CONE OF SILENCE –SECTION 2-486
- PROTEST PROCEDURES –CODE SECTION 2-371
- DEBARMENT PROCEEDINGS –SECTIONS 2-397 THROUGH 2-485.3
- LOBBYIST REGISTRATION AND DISCLOSURE OF FEES – SECTIONS 2-481 THROUGH 2-406
- CAMPAIGN CONTRIBUTIONS BY VENDORS – SECTION 2-487
- CAMPAIGN CONTRIBUTIONS – SECTION 2-488
- EQUAL BENEFITS FOR DOMESTIC PARTNERS – SECTION 2-373
- LIVING WAGE REQUIREMENT – SECTIONS 2-407 THROUGH 2-410
- FALSE CLAIMS ORDINANCE – SECTION 70-300
- ACCEPTANCE OF GIFTS, FAVORS & SERVICES – SECTION 2-449

**2. PUBLIC ENTITY CRIME.** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a bid on a contract to provide any goods to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit a bid on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**3. COMPLIANCE WITH THE CITY'S LOBBYIST LAWS.** This solicitation is subject to, and all bidders are expected to be or become familiar with, all City lobbyist laws. Bidders shall be solely responsible for ensuring that all City lobbyist laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including, without limitation, disqualification of their responses, in the event of such non-compliance.

**4. DEBARMENT ORDINANCE:** This solicitation is subject to, and all bidders are expected to be or become familiar with, the City's Debarment Ordinance as codified in Sections 2-397 through 2-406 of the City Code.

**5. COMPLIANCE WITH THE CITY'S CAMPAIGN FINANCE REFORM LAWS.** This solicitation is subject to, and all bidders are expected to be or become familiar with, the City's Campaign Finance Reform laws, as codified in Sections 2-487 through 2-490 of the City Code. Bidders shall be solely responsible for ensuring that all applicable provisions of the City's Campaign Finance Reform laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including disqualification of their responses, in the event of such non-compliance.

**6. CODE OF BUSINESS ETHICS.** Pursuant to City Resolution No.2000-37379, the bidder shall adopt a Code of Business Ethics ("Code") and submit that Code to the Procurement Division with its response or within five (5) days upon receipt of request. The Code shall, at a minimum, require the bidder, to comply with all applicable governmental rules and regulations including, among others, the conflict of interest, lobbying and ethics provision of the City of Miami Beach and Miami Dade County.

**7. AMERICANS WITH DISABILITIES ACT (ADA).** Call 305-673-7490 to request material in accessible format; sign language interpreters (five (5) days in advance when possible), or information on access for persons with disabilities. For more information on ADA compliance, please call the Public Works Department, at 305-673- 7000, Extension 2984.

**8. POSTPONEMENT OF DUE DATE FOR RECEIPT OF BIDS.** The City reserves the right to postpone the deadline for submittal of bids and will

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make a reasonable effort to give at least three (3) calendar days written notice of any such postponement to all prospective bidders through BidSync.

**9. PROTESTS.** Any protest concerning the specifications or award of this solicitation shall be in accordance with City Code Section 2-371. **Protests not submitted in a timely manner pursuant to the requirements of City Code Section 2-371 shall be barred.**

**10. JOINT VENTURES / SINGLE PURPOSE ENTITY.** Joint Ventures are not allowed. Bids shall be submitted only by the prime contractor. Bids may, however, identify other sub-contractors or sub-consultants to the prime Bidder who may serve as team members.

**11. VETERAN BUSINESS ENTERPRISES PREFERENCE.** Pursuant to City Code Section 2-374, the City shall give a preference to a responsive and responsible Bidder which is a small business concern owned and controlled by a veteran(s) or which is a service-disabled veteran business enterprise, and which is within five percent (5%) of the lowest responsive, responsible bidder, by providing such bidder an opportunity of providing said goods for the lowest responsive bid amount (or in this solicitation, the highest bid amount). Whenever, as a result of the foregoing preference, the adjusted prices of two (2) or more bidders which are a small business concern owned and controlled by a veteran(s) or a service-disabled veteran business enterprise constitute the lowest bid pursuant to an solicitation or oral or written request for quotation, and such bids are responsive, responsible and otherwise equal with respect to quality and service, then the award shall be made to the service-disabled veteran business enterprise.

**12. AGREEMENT BY BIDDERS.** Any individual that submits a bid in response to this solicitation agrees that any action taken by the City in response to bids made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such Bids, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City.

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all, responses; re-advertise this solicitation; postpone or cancel, at any time, this solicitation process; or waive any irregularities in this solicitation, or in any responses received as a result of this solicitation.

Reasonable efforts will be made to either award the bidder the contract or reject all bids within one-hundred twenty (120) calendar days after Bid opening date. In accordance with Section 47 below, a bidder may withdraw its bid after expiration of one hundred twenty (120) calendar days from the date of bid opening, by delivering written notice of withdrawal to the Procurement Department.

**13. COSTS INCURRED BY BIDDERS.** All expenses involved with the preparation and submission of Bids, or any work performed in connection therewith, shall be the sole responsibility (and shall be at the sole cost and expense) of the bidder, and shall not be reimbursed by the City.

**14. OCCUPATIONAL HEALTH AND SAFETY.** The bidder warrants to the City that any work, goods, supplies, materials or equipment supplied pursuant to this bid shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be deemed breach of contract. Any fines levied because of inadequacies to comply with this condition shall be borne solely by the bidder.

**15. TAXES.** The City of Miami Beach is exempt from all Federal Excise and State taxes.

**16. MISTAKES.** Bidders are expected to examine the terms, conditions, specifications, delivery schedules, proposed pricing, and all instructions pertaining to the goods relative to this solicitation. Failure to do so will be at the Bidder's risk and may result in the Bid being non-responsive.

**17. PAYMENT.** Payment will be made by the City after the goods have been received, inspected, and found to comply with contract specifications, free of damage or defect, and are properly invoiced.

**18. PATENTS & ROYALTIES.** Bidder shall indemnify and save harmless the City of Miami Beach, Florida, and its officers, employees, contractors, and/or agents, from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City of Miami Beach, Florida. If the bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

**19. DEFAULT.** Failure or refusal of the successful Bidder to execute a contract following approval of such contract by the City Commission, or untimely withdrawal of a bid response before such award is made and approved, may result in a claim for damages by the City, and may be grounds for removing the Bidder from the City's vendor list.

**20. MANNER OF PERFORMANCE.** Bidder agrees to perform its duties and obligations in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, regulations and codes. Lack of knowledge or ignorance by the bidder with/of applicable

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laws will in no way be a cause for relief from responsibility. Bidder agrees that the work and goods provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Bidder agrees to furnish to the City any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Bidder further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this contract. Failure of bidder to comply with this paragraph shall constitute a material breach of this contract.

**21. SPECIAL CONDITIONS.** Any and all Special Conditions that may vary from these General Terms and Conditions shall have precedence.

**22. NON-DISCRIMINATION.** The bidder certifies that it is in compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. In accordance with the City's Human Rights Ordinance, codified in Chapter 62 of the City Code, bidder shall prohibit discrimination by reason of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, and political affiliation.

**23. DEMONSTRATION OF COMPETENCY.**

- A. Pre-award inspection of the Bidder's facility may be made prior to the award of contract.
- B. Bids will only be considered from firms which are regularly engaged in the business of providing the goods as described in this solicitation.
- C. Bidders must be able to demonstrate a good record of performance for a reasonable period of time, and have sufficient financial capacity, equipment, and organization to ensure that they can satisfactorily perform the goods if awarded a contract under the terms and conditions of this solicitation.
- D. The terms "equipment and organization", as used herein shall, be construed to mean a fully-equipped and well-established company in line with the best business practices in the industry, and as determined by the City.
- E. The City may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a bidder, including past performance (experience), in making an award that is in the best interest of the City.
- F. The City may require bidder to show proof that it has been designated as authorized representatives of a manufacturer or supplier, which is the actual source of supply. In these instances, the City may also require material information from the source of supply regarding the quality, packaging, and characteristics of the products to be supply to the City. Any material conflicts between information provided by the source of supply and the information contained in the bidder's bid may render the bid non-responsive.
- G. The City may, during the period that the contract between the City and the successful bidder is in force, review the successful bidder's record of performance to ensure that the bidder is continuing to comply with contractual obligations as prescribed in this bid. Irrespective of the bidder's performance on contracts awarded to it by the City, the City may place said contracts on probationary status and implement termination procedures if the City determines that the successful bidder no longer possesses the financial support, equipment, and organization which would have been necessary during the bid evaluation period in order to comply with the demonstration of competency required under this subsection.

**24. ASSIGNMENT.** The successful Bidder shall not assign, transfer, convey, sublet or otherwise dispose of the contract, including any or all of its right, title or interest therein, or his/her or its power to execute such contract, to any person, company or corporation, without the prior written consent of the City.

**25. LAWS, PERMITS AND REGULATIONS.** The bidder shall obtain and pay for all licenses, permits, and inspection fees required to complete the work and shall comply with all applicable laws.

**26. OPTIONAL CONTRACT USAGE.** When the successful Bidder is in agreement, other units of government or non-profit agencies may participate in purchases pursuant to the award of this contract at the option of the unit of government or non-profit agency.

**27. VOLUME OF WORK.** To the extent applicable, it is the intent of the City to purchase the goods specifically listed in this solicitation. However, the City reserves the right to purchase any goods awarded from State or other governmental contracts, or on an as-needed basis through the City's spot market purchase provisions.

**28. DISPUTES.** In the event of a conflict between the documents, the order of priority of the documents shall be as follows:

- A. Any contract or agreement resulting from the award of this solicitation; then
- B. Addendum issued for this solicitation, with the latest Addendum taking precedence; then
- C. The solicitation; then
- D. The bidder's bid in response to the solicitation.

In case of any doubt or difference of opinion as to the items and/or goods (as the case may be) to be furnished hereunder, the decision of the City shall be final and binding on all parties.

**29. INDEMNIFICATION.** The Bidder shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or

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instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the agreement by the Bidder or its employees, agents, servants, partners, principals or subcontractors. The Bidder shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Bidder expressly understands and agrees that any insurance protection required by any agreement with the City or otherwise provided by the Bidder shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The above indemnification provisions shall survive the expiration or termination of this Agreement.

**30. FLORIDA PUBLIC RECORDS LAW.** Bidders are hereby notified that all bids including, without limitation, any and all information and documentation submitted therewith, are exempt from public records requirements under Section 119.07(1), Florida Statutes, and s. 24(a), Art. 1 of the State Constitution until such time as the City provides notice of an intended decision or until thirty (30) days after opening of the bids, whichever is earlier. Additionally, Bidder agrees to be in full compliance with Florida Statute 119.0701 including, but not limited to, agreement to (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the goods; (b) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Bidder upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

**31. OBSERVANCE OF LAWS.** Bidders are expected to be familiar with, and comply with, all Federal, State, County, and City laws, ordinances, codes, rules and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, may affect the scope of goods and/or project contemplated by this solicitation (including, without limitation, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines, and all EEO regulations and guidelines). Ignorance of the law(s) on the part of the Bidder will in no way relieve it from responsibility for compliance.

**32. CONFLICT OF INTEREST.** All bidders must disclose, in their Bid, the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, all bidders must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the bidder entity or any of its affiliates.

**33. MODIFICATION/WITHDRAWALS OF BIDS.** A bidder may submit a modified bid to replace all or any portion of a previously submitted Bid up until the Bid due date and time. Modifications received after the bid due date and time will not be considered. Bids shall be irrevocable until contract award unless withdrawn in writing prior to the bid due date, or after expiration of 180 calendar days from the opening of Bids without a contract award. Letters of withdrawal received after the Bid due date and before said expiration date, and letters of withdrawal received after contract award will not be considered.

**34. EXCEPTIONS TO SOLICITATION.** Bidders must clearly indicate any exceptions they wish to take to any of the terms in the solicitation, and outline what, if any, alternative is being offered. All exceptions and alternatives shall be included and clearly delineated, in writing, in the bid submittal. The City, at its sole and absolute discretion, may accept or reject any or all exceptions and alternatives. In cases in which exceptions and alternatives are rejected, the City shall require the bidder to comply with the particular term and/or condition of the solicitation to which bidder took exception to (as said term and/or condition was originally set forth in the solicitation and any exhibits or Addenda thereto).

**35. ACCEPTANCE OF GIFTS, FAVORS, SERVICES.** Bidders shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City, for the purpose of influencing consideration of this Bid. Pursuant to Sec. 2-449 of the City Code, no officer or employee of the City shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties.

**36. SUPPLEMENTAL INFORMATION.** City reserves the right to request supplemental information from bidders at any time during the solicitation process, unless otherwise noted herein.

**37. ENVIRONMENTAL REGULATIONS.** The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrants such determination in the opinion of the City. Bidder shall submit with its proposal, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidder shall notify the City immediately of notice of any citation or violation which bidder may receive after the proposal opening date and during the time of performance of any contract awarded to it.

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**38. RELATIONSHIP TO THE CITY.** It is the intent of the City, and Bidder's hereby acknowledge and agree, that the successful Bidder is considered to be an independent contractor, and that neither the Bidder, nor the Bidder's employees, agents, and/or contractors, shall, under any circumstances, be considered employees or agents of the City.

**39. INSPECTOR GENERAL AUDIT RIGHTS**

- A. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- B. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- C. Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- D. The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- E. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:
  - i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
  - ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- F. The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this contract.
- G. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.

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